

Detroit Coke RCRA Corrective Action Briefing Paper - April 16, 1999

Contacts: UIC - Allen Melcer, (312) 886-1498; RCRA - Greg Rudloff (312) 886-0455;
ORC - Steven Murawski, (312) 886-6741

Purpose:

MDEQ has requested that the lead for corrective action at Detroit Coke be transferred from EPA to the MDEQ through an MOU. EPA drafted an MOU containing provisions for EPA review and comment on corrective action documents, and increased public participation requirements. MDEQ has drafted a revised MOU with reduced EPA oversight, and significantly less public participation than EPA proposed. The purpose of this briefing paper is to receive direction from EPA management regarding the acceptability of MDEQ's oversight and public participation provisions in their revised MOU.

Background:

Detroit Coke is a former coking facility occupying 60 acres at the confluence of the Detroit and Rouge rivers in southwest Detroit, Michigan, adjacent to the Zug Island industrial complex (Site). The Site is located in an Environmental Justice community within the SEMI area. The Site can also be considered a potential brownfield redevelopment because of its location in a designated empowerment zone. However, contaminated ground water from the Site is entering the Detroit River, which is located in an Area of Concern under the Great Lakes Water Quality Agreement.

Historically, Detroit Coke produced waste ammonia liquor as a by-product of the coking of coal, and disposed of the ammonia liquor on-site into three permitted Underground Injection Control (UIC) wells. In September of 1990, the Detroit Coke facility was closed down. However, after the facility closed, Detroit Coke maintained the UIC permits containing RCRA corrective action and was therefore required to satisfy RCRA corrective action requirements under the authority of the UIC permits. In early 1999, Allied-Signal (Allied) obtained ownership of the Site and requested transfer of the UIC permits and corrective action requirements from Detroit Coke. Accordingly, the UIC program is in the process of transferring the UIC permits, including corrective action requirements, to Allied. While the UIC program completes the transfer, Allied continues to satisfy the existing corrective action requirements and plans to keep the UIC wells operational for use in the selected remedy.

The City of Detroit (City) has approved casino gambling. The chosen location for the casinos is currently occupied by cement storage silos. The City proposes relocating the cement silos to the Site in order to make room for the casinos. Allied, the City, MDEQ Emergency Response Division (ERD), several cement companies, and a 3rd party developer have been negotiating brownfield redevelopment options for the Site.

Recently, MDEQ has requested that the lead for corrective action at the site be transferred from EPA to the MDEQ through an MOU. ERD would conduct corrective action at the site with WMD consultation.

MDEQ Proposal on EPA Oversight

To the extent practical, consistent with the MDEQ's need to act expeditiously upon proposed response activities at the Property, the MDEQ commits to providing USEPA with the opportunity to review and comment to MDEQ on all proposals, workplans and reports developed by the state, its contractors, Allied and its contractors, or any other responsible party regarding the remediation. However, the Parties recognize that the review and comment period may be abbreviated and that it may be necessary for MDEQ to take action without USEPA comment.

Potential EPA Responses to MDEQ's Proposal:

Accept MDEQ's Proposed Level of EPA Oversight.

- Pros:**
- 1) Allows the transfer of CA lead to take place in a time frame suitable to the State and City
 - 2) Relieves EPA of resource burden entailed in conducting oversight.

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- Cons:**
- 1) Conceptual proposals by MDEQ and AlliedSignal indicate that they will perform an adequate clean-up for most of the site, although some issues remain unresolved. However, absent a binding agreement between the MDEQ and Allied, there is no assurance that the clean-up will take place to the level proposed.
 - 2) Contamination (ammonia, cyanide) outside of the proposed slurry wall location may be allowed to continue to discharge to the rivers through the use of mixing zone calculations and questionable "natural attenuation".
 - 3) Citizens in the past have expressed concern over the adequacy of clean-up at the Site under MDEQ. Citizens may perceive EPA as abandoning their responsibilities at the Site.

Require More Extensive EPA Oversight.

- Pros:**
- 1) EPA could ensure an environmentally protective clean-up at the Site.
 - 2) Citizens will be reassured that EPA is overseeing an adequate clean-up. In the past, citizens have expressed concern over the adequacy of clean-up at the Site under MDEQ.
- Cons:**
- 1) This option is opposed by MDEQ, the City of Detroit, Allied Signal, and the redevelopment companies.
 - 2) EPA generally does not provide this level of oversight to an authorized State.
 - 3) This option will require considerable EPA resources to manage and oversee the project, especially in light of the extremely short timeframes involved with this project.

MDEQ Proposal on Public Participation

The MDEQ commits to holding public meetings regarding the remediation of the Property, as required by Federal or State statutes, regulations or guidance. Prior to the transfer of the lead from USEPA to MDEQ, the Parties will hold a joint public meeting to explain the transfer of RCRA CA authority from USEPA to MDEQ and the proposed plans for remediation of the Property. The MDEQ will invite USEPA to participate in all public meetings the MDEQ holds regarding the remediation of the Property.

The MDEQ will develop and distribute Site Information Bulletins, as appropriate, describing the status of activities and proposed actions associated with the remediation of the Property to all residents within a 1 mile radius of the Property and interested parties. All Bulletins will include a name and phone number from the MDEQ and the City of Detroit for interested parties to contact.

Potential EPA Responses to MDEQ's Proposal

Accept MDEQ's proposed level of public participation.

- Pros:**
- 1) Allows the transfer of CA lead to take place in a time frame suitable to the State and City
- Cons:**
- 1) Allows for less public participation that EPA would have conducted if EPA retains the lead of this EJ site.
 - 2) MDEQ intends to conduct the remediation through a series of interim measures which does not require a public comment period. Therefore, by the time the public hearing for the RAP occurs, remediation of the site will likely be substantially complete.
 - 3) Opens MDEQ and possibly EPA to EJ and Title VI challenges to any permits.
 - 4) The public may feel that they have been left out of the process.
 - 5) EPA has spent much resources building trust in the community through the SEMI team and initiatives such as Good Neighbors United. Failure to involve the community would damage the relationships we have spent time and resources building.

Require More Extensive Public Participation

- Pros:**
- 1) The public will have more input in the Corrective Action process.

- 2) Puts MDEQ and EPA in a better position to defend ourselves from EJ and Title VI complaints.
- 3) EPA has spent much resources building trust in the community through the SEMI team and initiatives such as Good Neighbors United. This would further enhance our relationship with the community.

- Cons:**
- 1) This option is strongly opposed by MDEQ, the City of Detroit, Allied Signal, and the redevelopment companies.
 - 2) Further negotiation of this issue may cause the transfer of authority to miss Detroit's deadline.

Recommendations:

RCRA and UIC recommend the following:

Oversight

- 1) Accept the State's proposed language that EPA will be afforded an opportunity to review and comment on documents as MDEQ's schedule allows.

Public Participation

- 1) Generally accept State's language on public participation.
- 2) Negotiate with the State a provision to the effect that "If the technical details of the proposed interim measures have not been finalized by the time of the first public meeting, a second public meeting will be held to fully explain the interim measures prior to their implementation".

*will speak out if a problem.
only get copied on docs.*

try to get WMD review.

Contacts: UIC - Allen Melcer, (312) 886-1498; RCRA - Greg Rudloff (312) 886-0455;
ORC - Steven Murawski, (312) 886-6741

Purpose:

The purpose of this briefing paper is to receive direction from EPA management regarding EPA's future involvement in the RCRA corrective action activities at the Detroit Coke Site. This briefing paper outlines three options available to EPA and the pros and cons of each option. The three options are: 1) EPA retains the lead on the RCRA corrective action, 2) EPA cedes the RCRA corrective action lead to the MDEQ under an existing transfer procedure, 3) EPA cedes the RCRA corrective action lead to the MDEQ under a Site Specific Memorandum of Understanding.

Background:

Detroit Coke is a former coking facility occupying 60 acres at the confluence of the Detroit and Rouge rivers in southwest Detroit, Michigan, adjacent to the Zug Island industrial complex (Site). The Site is located in an Environmental Justice community within the SEMI area. The Site can also be considered a potential brownfield redevelopment because of its location in a designated empowerment zone. However, contaminated ground water from the Site is entering the Detroit River, which is located in an Area of Concern under the Great Lakes Water Quality Agreement.

Historically, Detroit Coke produced waste ammonia liquor as a by-product of the coking of coal, and disposed of the ammonia liquor on-site into three permitted Underground Injection Control (UIC) wells. In September of 1990, the Detroit Coke facility was closed down. However, after the facility closed, Detroit Coke maintained the UIC permits containing RCRA corrective action and was therefore required to satisfy RCRA corrective action requirements under the authority of the UIC permits. In early 1999, Allied-Signal (Allied) obtained ownership of the Site and requested transfer of the UIC permits and corrective action requirements from Detroit Coke. Accordingly, the UIC program is in the process of transferring the UIC permits, including corrective action requirements, to Allied. While the UIC program completes the transfer, Allied continues to satisfy the existing corrective action requirements and plans to keep the UIC wells operational for use in the selected remedy.

Recently, the City of Detroit (City) approved casino gambling. The chosen location for the casinos is currently occupied by cement storage silos. The City proposes relocating the cement silos to the Site in order to make room for the casinos. Allied, the City, MDEQ Emergency Response Division (ERD), several cement companies, and a 3rd party developer have been negotiating brownfield redevelopment options for the Site.

Regarding the redevelopment options, the City, MDEQ ERD and Allied have been meeting privately, executing field investigations, and exploring remediation alternatives without EPA's direct involvement or oversight. EPA has repeatedly requested to be directly involved in all decisions regarding remediation of the Site because EPA retains the lead on corrective action and because the City has previously requested that EPA approve the final remediation and provide liability protection from environmental liability to future owners of the Site.

In light of EPA's past exclusion in the remediation discussions and EPA's potential resource deficiency regarding RCRA's ability to provide comprehensive oversight, the following three options are proposed to determine EPA's future role at the Site.

Option 1: EPA Retains Lead on Corrective Action

EPA imposes existing corrective action requirements on Allied through the UIC permits. EPA can restart corrective action by imposing a Corrective Measure Study (CMS) on Allied. EPA has been prepared to issue a CMS for some time. However, the City strongly objects to EPA's issuance of a CMS to Allied because the City believes that imposing that requirement on Allied may interfere with pending redevelopment plans.

- Pros:**
- 1) EPA could ensure an environmentally protective clean-up at the Site (provided that RCRA can provide full support).
 - 2) EPA could provide complete oversight and approve all of the corrective action activities on the Site.

- 3) EPA may be able to provide developers with a Prospective Purchasers Agreement (PPA), which would provide liability protection to future owners of the Site. Furthermore, the City has previously indicated that liability protection is necessary for redevelopment to proceed.
- 4) Citizens will be reassured that EPA is overseeing an adequate clean-up. In the past, citizens have expressed concern over the adequacy of clean-up at the Site under MDEQ.

- Cons:**
- 1) This option will require considerable EPA resources to manage and oversee the project.
 - 2) Since Detroit Coke is currently not a GPRA priority facility, RCRA does not have the resources to provide extensive support. At the request of MDEQ, the Detroit Coke Site was recently removed from the GPRA baseline and replaced with a site that would be more likely to complete cleanup by 2005. Furthermore, according to headquarters, the Site cannot be reclassified as a GPRA priority facility. Consequently, without RCRA support, EPA cannot oversee corrective action at the Site and would be forced to cede authority to the State.
 - 3) Due to the imminency of the City's pending redevelopment plans, the City will try to pressure EPA to complete corrective action in an unreasonable time frame (~ 3 months) or to cede corrective action lead to the MDEQ.

Option 2: EPA Cedes Corrective Action Authority to MDEQ under an Existing Transfer Procedure

Since MDEQ ERD (State Superfund) has undertaken significant corrective action at the Site without EPA involvement and because EPA may be unable to allocate adequate RCRA oversight resources to this Site (because the Site has not been designated as a GPRA high priority corrective action site), EPA cedes corrective action authority to the State. The transfer of corrective action authority could be accomplished by removing the corrective action requirements from the UIC permits and replacing them with a statement that MDEQ has assumed authority to enforce the corrective action requirements in accordance with 40 CFR §271.8(b)(6) and the existing Memorandum of Agreement between EPA and MDEQ. However, for corrective action to continue at the Site, MDEQ would have to issue a corrective action permit or order.

- Pros:**
- 1) Relieves EPA of the resource burden of overseeing corrective action at a non-GPRA site.
 - 2) Would potentially allow greater flexibility for corrective action to be completed in a time frame acceptable to the City.
 - 3) Would avoid pressure from the City to complete corrective action in an unreasonable time frame.

- Cons:**
- 1) There have been indications that if EPA is not in lead, the clean-up would likely consist of very limited source removal followed by ground water monitoring with some pavement of the Site. The majority of coal tar/oil will not be removed and thus likely act as a continuing source to both ground water and the Detroit River.
 - 2) EPA would not be able to provide liability protection (including a PPA) to potential developers or the City, thus hampering redevelopment of the Site.
 - 3) Citizens in the past have expressed concern over the adequacy of clean-up at the Site under MDEQ. Citizens may perceive EPA as abandoning their responsibilities at the Site.
 - 4) To date, MDEQ has indicated that it does not want EPA to transfer the RCRA corrective action to the State RCRA program. MDEQ has maintained that any transfer from EPA should be to the State Superfund program, ERD.
 - 5) At the request of MDEQ, the Detroit Coke Site was recently removed from the GPRA baseline. Since Detroit Coke is currently not a GPRA priority facility, MDEQ does not have the resources to oversee Corrective Action.
 - 6) Before EPA can remove the Corrective Action requirements from the UIC permits, the State must issue a permit/order to Allied which cannot be done in a timeframe that will satisfy the City.

Option 3: EPA Cedes Corrective Action Authority to MDEQ under a Site Specific MOU

Similar to Option 2 above, because MDEQ ERD (State Superfund) has undertaken significant corrective action at the Site without EPA involvement and because EPA may be unable to allocate adequate RCRA oversight resources to this Site (because the Site has not been designated as a GPRA high priority corrective action site), EPA cedes corrective action authority to the State. The transfer of corrective action authority could be accomplished by entering into a site specific Memorandum of Understanding (MOU). In the MOU, EPA would directly transfer the corrective action requirements from EPA RCRA/UIC to MDEQ ERD (State Superfund). To ensure a protective cleanup of the Site, the MOU would contain

general provisions outlining remediation requirements that must be satisfied and increased public participation requirements to fulfill existing environmental justice obligations.

- Pros:**
- 1) Relieves EPA of the resource burden of overseeing corrective action at a non-GPRA site.
 - 2) Would potentially allow greater flexibility for corrective action to be completed in a time frame acceptable to the City.
 - 3) Would avoid pressure from the City to complete corrective action in an unreasonable time frame.
 - 4) Would satisfy MDEQ's request to remediate the Site under the State Superfund Program.
 - 5) Unlike Option 2 where the EPA cedes all of its authority to oversee remediation and to require increased public participation opportunities, Option 3 proscribes general requirements upon MDEQ that will impose remediation requirements and environmental justice obligations.
- Cons:**
- 1) Recent statements by the State indicate that they will require an adequate site clean-up. However, absent a binding agreement between the State and Allied, there is no assurance that the clean-up will take place to the level which the State has proposed.
 - 2) The State mechanism for enforcing clean-up under State Superfund is a Section 14 letter which only requires the PRP to submit a workplan to address the problem(s). If the EPA wants to ensure that an adequate clean-up takes place, EPA cannot remove the corrective action requirements from the UIC permits until the workplan has been approved by MDEQ. Workplan approval can be a lengthy process. Clean-up would be complicated by dual State and Federal authorities imposed on Allied, which would almost certainly object.
 - 3) If EPA wants to transfer the lead to the State immediately after the State issues the Section 14 letter, EPA would have to rely on the State to require an adequate site clean-up. The MOU may partially resolve this issue by giving EPA review and comment rights.
 - 4) EPA would not be able to provide liability protection (including a PPA) to potential developers or the City, thus hampering redevelopment of the Site.
 - 5) Citizens in the past have expressed concern over the adequacy of clean-up at the Site under MDEQ. Citizens may perceive EPA as abandoning their responsibilities at the Site.

Recommendations:

The Divisions recommend Option 3. The legal process to transfer the RCRA corrective action authority from EPA to MDEQ ERD can be accomplished if:

1. MDEQ agrees to the MOU with strong provisions for EPA review and comment as well as for public participation.
2. MDEQ ensures that corrective action at the Site will comply with all of the Michigan Part 201 statutory and regulatory requirements by issuing a Section 14 letter to the current owner.

Absent MDEQ satisfying the requirements of Option 3, EPA should maintain the lead on corrective action at the Site.

Attachment

Detroit Coke RCRA Corrective Action Briefing Paper - February 24, 1999

Contacts: UIC - Allen Melcer, (312) 886-1498; RCRA - Greg Rudloff (312) 886-0455;
ORC - Steven Murawski, (312) 886-6741

Purpose:

The purpose of this briefing paper is to receive direction from EPA management regarding EPA's future involvement in the RCRA corrective action activities at the Detroit Coke Site. This briefing paper outlines three options available to EPA and the pros and cons of each option. The three options are: 1) EPA retains the lead on the RCRA corrective action, 2) EPA cedes the RCRA corrective action lead to the MDEQ under an existing transfer procedure, 3) EPA cedes the RCRA corrective action lead to the MDEQ under a Site Specific Memorandum of Understanding.

Background:

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Historically, Detroit Coke produced waste ammonia liquor as a by-product of the coking of coal, and disposed of the ammonia liquor on-site into three permitted Underground Injection Control (UIC) wells. In September of 1990, the Detroit Coke facility was closed down. However, after the facility closed, Detroit Coke maintained the UIC permits containing RCRA corrective action and was therefore required to satisfy RCRA corrective action requirements under the authority of the UIC permits. In early 1999, Allied-Signal (Allied) obtained ownership of the Site and requested transfer of the UIC permits and corrective action requirements from Detroit Coke. Accordingly, the UIC program is in the process of transferring the UIC permits, including corrective action requirements, to Allied. While the UIC program completes the transfer, Allied continues to satisfy the existing corrective action requirements and plans to keep the UIC wells operational for use in the selected remedy.

Recently, the City of Detroit (City) approved casino gambling. The chosen location for the casinos is currently occupied by cement storage silos. The City proposes relocating the cement silos to the Site in order to make room for the casinos. Allied, the City, MDEQ Emergency Response Division (ERD), several cement companies, and a 3rd party developer have been negotiating brownfield redevelopment options for the Site.

Regarding the redevelopment options, the City, MDEQ ERD and Allied have been meeting privately, executing field investigations, and exploring remediation alternatives without EPA's direct involvement or oversight. EPA has repeatedly requested to be directly involved in all decisions regarding remediation of the Site because EPA retains the lead on corrective action and because the City has previously requested that EPA approve the final remediation and provide liability protection from environmental liability to future owners of the Site.

In light of EPA's past exclusion in the remediation discussions and EPA's potential resource deficiency regarding RCRA's ability to provide comprehensive oversight, the following two options are proposed to determine EPA's future role at the Site.

Option 1: EPA Retains Lead on Corrective Action

EPA imposes existing corrective action requirements on Allied through the UIC permits. EPA can restart corrective action by imposing a Corrective Measure Study (CMS) on Allied. EPA has been prepared to issue a CMS for some time. However, the City strongly objects to EPA's issuance of a CMS to Allied because the City believes that imposing that requirement on Allied may interfere with pending redevelopment plans.

- Pros:**
- 1) EPA could ensure an environmentally protective clean-up at the Site (provided that RCRA can provide full support).
 - 2) EPA could provide complete oversight and approve all of the corrective action activities on the Site.

- 3) EPA may be able to provide developers with a Prospective Purchasers Agreement (PPA), which would provide liability protection to future owners of the Site. Furthermore, the City has previously indicated that liability protection is necessary for redevelopment to proceed.
- 4) Citizens will be reassured that EPA is overseeing an adequate clean-up. In the past, citizens have expressed concern over the adequacy of clean-up at the Site under MDEQ.

- Cons:**
- 1) This option will require considerable EPA resources to manage and oversee the project.
 - 2) Since Detroit Coke is currently not a GPRA priority facility, RCRA does not have the resources to provide extensive support. At the request of MDEQ, the Detroit Coke Site was recently removed from the GPRA baseline and replaced with a site that would be more likely to complete cleanup by 2005. Furthermore, according to headquarters, the Site cannot be reclassified as a GPRA priority facility. Consequently, without RCRA support, EPA cannot oversee corrective action at the Site and would be forced to cede authority to the State.
 - 3) Due to the imminency of the City's pending redevelopment plans, the City will try to pressure EPA to complete corrective action in an unreasonable time frame (~ 3 months) or to cede corrective action lead to the MDEQ.

Option 2: EPA Cedes Corrective Action Authority to MDEQ under an Existing Transfer Procedure

Since MDEQ ERD (State Superfund) has undertaken significant corrective action at the Site without EPA involvement and because EPA may be unable to allocate adequate RCRA oversight resources to this Site (because the Site has not been designated as a GPRA high priority corrective action site), EPA cedes corrective action authority to the State. The transfer of corrective action authority could be accomplished by removing the corrective action requirements from the UIC permits and replacing them with a statement that MDEQ has assumed authority to enforce the corrective action requirements in accordance with 40 CFR §271.8(b)(6) and the existing Memorandum of Agreement between EPA and MDEQ. However, for corrective action to continue at the Site, MDEQ would have to issue a corrective action permit or order.

- Pros:**
- 1) Relieves EPA of the resource burden of overseeing corrective action at a non-GPRA site.
 - 2) Would potentially allow greater flexibility for corrective action to be completed in a time frame acceptable to the City.
 - 3) Would avoid pressure from the City to complete corrective action in an unreasonable time frame.

- Cons:**
- 1) There have been indications that if EPA is not in lead, the clean-up would likely consist of very limited source removal followed by ground water monitoring with some pavement of the Site. The majority of coal tar/oil will not be removed and thus likely act as a continuing source to both ground water and the Detroit River.
 - 2) EPA would not be able to provide liability protection (including a PPA) to potential developers or the City, thus hampering redevelopment of the Site.
 - 3) Citizens in the past have expressed concern over the adequacy of clean-up at the Site under MDEQ. Citizens may perceive EPA as abandoning their responsibilities at the Site.
 - 4) To date, MDEQ has indicated that it does not want EPA to transfer the RCRA corrective action to the State RCRA program. MDEQ has maintained that any transfer from EPA should be to the State Superfund program, ERD.

Option 3: EPA Cedes Corrective Action Authority to MDEQ under a Site Specific MOU

Similar to Option 2 above, because MDEQ ERD (State Superfund) has undertaken significant corrective action at the Site without EPA involvement and because EPA may be unable to allocate adequate RCRA oversight resources to this Site (because the Site has not been designated as a GPRA high priority corrective action site), EPA cedes corrective action authority to the State. The transfer of corrective action authority could be accomplished by entering into a site specific Memorandum of Understanding (MOU). In the MOU, EPA would directly transfer the corrective action requirements from EPA RCRA/UIC to MDEQ ERD (State Superfund). To ensure a protective cleanup of the Site, the MOU would contain specific provisions outlining essential remediation requirements that must be satisfied and increased public participation requirements to fulfill existing environmental justice obligations.

- Pros:**
- 1) Relieves EPA of the resource burden of overseeing corrective action at a non-GPRA site.

- 2) Would potentially allow greater flexibility for corrective action to be completed in a time frame acceptable to the City.
- 3) Would avoid pressure from the City to complete corrective action in an unreasonable time frame.
- 4) Would satisfy MDEQ's request to remediate the Site under the State Superfund Program.
- 5) Unlike Option 2 where the EPA cedes all of its authority to oversee remediation and to require increased public participation opportunities, Option 3 proscribes site specific requirements upon MDEQ that will impose certain remediation requirements and environmental justice obligations.

- Cons:**
- 1) There have been indications that if EPA is not in lead, the clean-up would likely consist of very limited source removal followed by ground water monitoring with some pavement of the Site. The majority of coal tar/oil will not be removed and thus likely act as a continuing source to both ground water and the Detroit River.
 - 2) EPA would not be able to provide liability protection (including a PPA) to potential developers or the City, thus hampering redevelopment of the Site.
 - 3) Citizens in the past have expressed concern over the adequacy of clean-up at the Site under MDEQ. Citizens may perceive EPA as abandoning their responsibilities at the Site.
 - 4) Although this option resolves many of the issues presented in remediation of this Site, the option offers the least attractive alternative with respect to protection of human health and the environment because this option allows MDEQ to remediate the Site under State Superfund requirements, not the more stringent RCRA requirements required by Option 1 or 2.

Recommendations:

ORC: ORC strongly recommends Options 1 or 2. The legal process to transfer the RCRA corrective action authority from EPA to MDEQ is clearly outlined in 40 CFR §271.8(b)(6) and the existing Memorandum of Agreement between EPA and MDEQ. Accordingly, the transfer of corrective action lead of the Site to MDEQ can be accomplished if:

1. MDEQ accepts the transfer of the RCRA corrective action including compliance with the transfer mechanism outlined in 40 CFR §271.8(b)(6) and the existing Memorandum of Agreement between EPA and MDEQ; and
2. MDEQ ensures that corrective action at the Site will comply with all of the RCRA statutory and regulatory requirements by issuing a corrective action permit or order to the current owner.

Absent MDEQ satisfying the requirements of Option 2, EPA should maintain the lead of corrective action at the Site as stated in Option 1. However, if RCRA cannot commit full and adequate support to the project under Option 1, then ORC would reluctantly support Option 3.

UIC: Supports ORC's recommendation.

RCRA: The RCRA program supports Option 2 for the following reasons:

- Retaining the corrective action lead would require a large commitment of resources at both the staff and management level. This would reduce the resources that are available to RCRA for work on GPRA baseline facilities which are a top priority.
- Retaining the corrective action lead would require extensive involvement of senior management to deal with the political issues involved in this project.
- The MDEQ is in a better position to work closely with the City of Detroit to undertake corrective action activities while meeting the City's needs.
- The MDEQ is fully authorized for corrective action.

RCRA COMMENTS
Detroit Coke RCRA Corrective Action Briefing Paper - February 24, 1999
FOIA EXEMPT

Contact: Greg Rudloff (312) 886-0455

The RCRA program has the following comments on the Detroit Coke RCRA Corrective Action Briefing Paper dated February 24, 1999:

COMMENTS:

Option 3, Con 4)

1. RCRA believes that this statement is incorrect. The State RCRA program and the State Superfund program both use the same cleanup criteria for their sites. A cleanup conducted under either program should yield the same results.

Recommendations:

2. In the event that Option 1 is implemented, the RCRA recommendation is not compatible with respect to providing resources to the UIC program for corrective action oversight.

Detroit Coke RCRA Corrective Action Briefing Paper - September 14, 1998

Contacts: UIC - Allen Melcer, (312) 886-1498; RCRA - Greg Rudloff (312) 886-0455;
ORC - Steven Murawski, (312) 886-6741

Purpose:

The purpose of this briefing paper is to provide USEPA management with three legally viable options to remediate the Detroit Coke Site. We are seeking approval from management to provide these options to the MDEQ and City of Detroit for their consideration. These options attempt to address all of the major concerns of the USEPA, the City of Detroit and MDEQ. Upon concurrence by USEPA management, a separate summary of the options will be forwarded to MDEQ and the City of Detroit. Part I of the paper offers a brief summary of the issues, the options and the recommendation developed by USEPA staff. Part II of the paper offers a full discussion of the background of the site and the three proposed options including advantages and disadvantages of each specific option.

PART I - BRIEF SUMMARY

Issues:

1. Can USEPA separate a relatively clean portion of a RCRA corrective action site from the more contaminated areas and allow that portion to be cleaned and sold to an end user?
2. After completion of the remediation, what assurances can USEPA provide to end users regarding RCRA corrective action liability?

Option 1: Clean-up and Acquisition

- A. Detroit Coke or MDEQ remediates the 25-acre portion of the property desired by the City of Detroit under USEPA corrective action authority in the existing UIC permits.
- B. USEPA provides a certification of remedy completion for the 25-acre portion of the site after the remediation (if regulatory and statutory requirements are fulfilled).
- C. Detroit Coke transfers the 25-acre portion of the property to the City of Detroit and USEPA redefines the Detroit Coke Site in the existing UIC permits.

Option 2: Clean-up, Acquisition and New Permit Issuance

- A. Detroit Coke or MDEQ remediates the 25-acre portion of the property desired by the City of Detroit under USEPA corrective action authority in the existing UIC permits; simultaneously, Allied-Signal applies for UIC permits currently held by Detroit Coke.
- B. USEPA provides a certification of remedy completion for the 25-acre portion of the site after the remediation (if regulatory and statutory requirements are fulfilled).
- C. Detroit Coke transfers the 25-acre portion of the property to the City of Detroit and USEPA issues to Allied-Signal UIC permits that do not include the 25-acre portion of the site.

Option 3: Acquisition and Clean-up under MDEQ Authority

- A. The City of Detroit acquires the 25-acre portion of the property desired from Detroit Coke and USEPA redefines Detroit Coke Site in the existing UIC permits.
- B. MDEQ issues a corrective action permit or order to the City of Detroit; however, MDEQ remediates the 25-acre portion of the Site.
- C. MDEQ provides a certification of remedy completion for the 25-acre portion of the site.

Recommendation: Any Option chosen would require the City of Detroit to enter into potentially extensive negotiations with Detroit Coke, Allied-Signal and MDEQ. Therefore, until the City negotiates an agreement with the current site owners, the staff recommend that USEPA continue to enforce the current corrective action requirements imposed upon the current UIC permit holder, Detroit Coke. Moreover, until MDEQ issues a corrective action permit or order to an owner or operator of the site, USEPA must continue to maintain the lead of the corrective action requirements at the site.

PART II - DISCUSSION

Background:

The Detroit Coke facility (Site), located in an Environmental Justice community at the confluence of the Detroit and Rouge rivers, is in southwest Detroit, adjacent to the Zug Island industrial complex. Detroit Coke was a coking facility, formerly owned by Allied-Signal Corp., that produced waste ammonia liquor which was disposed of into three on-site Class I hazardous waste underground injection control (UIC) wells. In September 1990, the Detroit Coke facility closed down. In June 1995, UIC well #1 was plugged. The current Federal UIC permits issued to Detroit Coke have site-wide corrective action requirements in them because Federal UIC permits are RCRA permits by rule and therefore include corrective action requirements. At the time the UIC permits were originally issued to Detroit Coke on September 26, 1991, the State of Michigan was not authorized to administer RCRA corrective action permits. However, on April 8, 1996, USEPA approved Michigan's corrective action program and authorized Michigan to administer RCRA corrective action permits. Pursuant to the existing UIC permits' corrective action provisions, Detroit Coke first submitted a RCRA Facility Investigation (RFI) workplan to USEPA for review and approval on April 1, 1996. USEPA suspended review of Detroit Coke's revised RFI workplan when USEPA learned that MDEQ began a State-funded RFI on February 23, 1998.

MDEQ began the State-funded RFI due, in part, to a recently approved plan to construct casino gambling facilities in Detroit. The chosen location for the casinos is currently occupied by cement storage silos. The City of Detroit (City) proposes relocating the cement silos to the Detroit Coke Site in order to make room for the casinos. The City is prompting the MDEQ to take the lead for corrective action in order to conduct an expedited clean-up.

Detroit Coke recently defaulted on its property taxes, causing the ownership of the Site to become clouded. However, Allied-Signal has recently paid the back taxes, thus redeeming Detroit Coke's ownership of the Site. From February, 1998, through June, 1998, the time when title to the Site was clouded, the MDEQ completed a State-funded facility investigation which shows extensive soil and water contamination. The contaminants are mainly coal tar constituents and metals. Contamination in numerous places exceeds state risk-based clean-up levels. Free product consisting of coal tar/coal oil was found in monitor wells and soil borings and appears to be ubiquitous throughout the Site. The corrective action activities pursuant to the UIC permits (funded by both Detroit Coke and Allied-Signal), have been suspended due to the State's mobilization on-site, but may be resumed in the near future due to the length of time required to transfer the corrective action lead from USEPA to the State.

On August 19, 1998, the City of Detroit expressed its desire to purchase or otherwise obtain title to approximately 25 acres of the Site along the Detroit River. Afterward, the City would like to transfer the 25-acre parcel to three cement silo companies to compensate the companies for their property in the riverfront district where the casinos are to be built. However, the City does not want to assume corrective action liability for the parcel, nor do the cement companies. The City, MDEQ and USEPA have been exploring ways in which the parcel can be transferred to an end user (the cement companies) without incurring RCRA liability for past contamination.

Issues:

1. Can USEPA separate a relatively clean portion of a RCRA corrective action site from the more contaminated areas and allow that portion to be cleaned and sold to an end user?
2. After completion of the remediation, what assurances can USEPA provide to end users regarding RCRA corrective action liability?

Options:

1. **Clean-up and Acquisition:** Initially, USEPA, the City, MDEQ, Detroit Coke and Allied-Signal would have to come to an agreement on the following sequence of steps. Under the existing corrective action authority of the UIC permits, the 25-acre portion of the Site desired by the City is remediated. Before the remediation begins, a major modification of the UIC permits must be made to incorporate the chosen remedy for the 25-acre portion of the Site. See Detroit Coke Permits Attachment E, Section G5. Additionally, the permittee must provide financial assurance for implementing the remedy for the 25-acre portion of the Site. Id. During the remediation, the 25-acre parcel should also be surveyed and given a tax ID separate from the rest of the Detroit Coke facility. Then, USEPA issues a certification of remedy completion to Detroit Coke if the 25-acre portion of the Site has been remediated according to statutory and regulatory requirements. Upon Detroit Coke's request for minor modification of the permit pursuant to 40 C.F.R. § 144.41(d), USEPA modifies the UIC permits to remove the remediated portion from corrective action requirements. Afterward, the City of Detroit acquires the 25-acre portion of the Site from Detroit Coke. Finally, the City transfers the 25-acre portion of the Site to the end user.

A. Advantages

- 1) MDEQ would not have to issue a corrective action permit or order to the City for the 25-acre parcel as would be required if Option 3 is selected.
- 2) This option provides a USEPA and MDEQ RCRA liability shield for the City and any end user of the 25-acre parcel because the City does not become the owner of the 25-acre portion of the Site until after liability protection is afforded by the certification of remedy completion.
- 3) Site remediation would occur more quickly under this option than under an option that requires transfer of the property prior to remediation (e.x. Option 3).

B. Disadvantages

- 1) A risk exists that the private parties involved could refuse to satisfy their contract commitments to the City after remediation of the 25-acre portion of the property is complete. Possible solutions to this disadvantage include entering into a contract prior to remediation which clearly outlines the property transfer and provides for liquidated damages for breach of

contract, placing funds into an escrow account, and obtaining an insurance policy for the site.

- 2) After the clean-up, future releases (e.x. migration of contaminated groundwater) could occur from the northern portion of the Site to the 25-acre portion of the Site. Although the owner of the northern portion of the Site would clearly be liable for the future releases under 42 U.S.C. § 3004(v), access issues could be negotiated in anticipation of a future release.

2. **Clean-up, Acquisition and New Permit Issuance:** Initially, USEPA, the City, MDEQ, Detroit Coke and Allied-Signal would have to come to an agreement on the following sequence of steps. Under the existing corrective action authority of the UIC permits, the 25-acre portion of the Site desired by the City is remediated. Before the remediation begins, a major modification of the UIC permits must be made to incorporate the chosen remedy for the 25-acre portion of the Site. See Detroit Coke Permits Attachment E, Section G5. Additionally, the permittee must provide financial assurance for implementing the remedy for the 25-acre portion of the Site. Id. During the remediation, the 25-acre parcel should also be surveyed and given a tax ID separate from the rest of the Detroit Coke facility. Additionally, Allied-Signal would submit an application to USEPA to take over the two injection wells from Detroit Coke. After completion of the remediation, USEPA issues a certification of remedy completion to Detroit Coke if the 25-acre portion of the Site has been remediated according to statutory and regulatory requirements. Afterward, the City of Detroit acquires the 25-acre portion of the Site from Detroit Coke. Then, the City transfers the 25-acre portion of the Site to the end user. Finally, USEPA either issues UIC permits to Allied-Signal with corrective action requirements that do not include the 25-acre parcel or USEPA issues UIC permits without corrective action requirements if MDEQ is prepared to enforce the existing corrective action requirements.

A. Advantages

- 1) MDEQ would not have to issue a corrective action permit or order to the City for the 25-acre parcel as would be required if Option 3 is selected.
- 2) This option provides a USEPA and MDEQ RCRA liability shield for the City and any end user of the 25-acre parcel because the City does not become the owner of the 25-acre portion of the Site until after liability protection is afforded by the certification of remedy completion.
- 3) This option allows USEPA to directly impose RCRA corrective action requirements on Allied-Signal rather than allowing Allied-Signal to continue acting in a voluntary capacity for Detroit Coke.

B. Disadvantages

- 1) Under this Option, timing of USEPA's issuance of the UIC permits to Allied-Signal and the completion of corrective action on the 25-acre parcel would be difficult to coordinate. This difficulty arises because Allied-Signal would be subject to the complete UIC permitting process which includes public comment periods and the right to appeal USEPA's permitting decision.
 - 2) This Option would require a high level of cooperation between Allied-Signal, Detroit Coke and the City of Detroit to ensure that the timing of the issuance of the UIC permits and the completion of the remediation of the 25-acre portion of the property are properly coordinated.
 - 3) This option depends upon Allied-Signal's willingness to submit UIC permit applications to USEPA and to assume responsibility for the two UIC wells.
 - 4) A risk exists that the private parties involved could refuse to satisfy their contract commitments to the City after remediation of the 25-acre portion of the property is complete. Possible solutions to this disadvantage include entering into a contract prior to remediation which clearly outlines the property transfer and provides for liquidated damages for breach of contract, placing funds into an escrow account, and obtaining an insurance policy for the site.
 - 5) The UIC branch may have to issue two additional UIC permits with RCRA corrective action requirements to Allied-Signal to avoid any lapse of authority to require and enforce corrective action at the Detroit Coke site.
 - 6) After the clean-up, future releases (e.x. migration of contaminated groundwater) could occur from the northern portion of the Site to the 25-acre portion of the Site. Although the owner of the northern portion of the Site would clearly be liable for the future releases under 42 U.S.C. § 3004(v), access issues could be negotiated in anticipation of a future release.
3. **Acquisition and Clean-up under MDEQ Authority:** The 25-acre parcel desired by the City is surveyed and given a tax ID separate from the rest of the Detroit Coke facility. Then, the City acquires the 25-acre portion of the Site from Detroit Coke and MDEQ issues a corrective action permit or order to the City for the 25-acre portion of the Site. Upon Detroit Coke's request for minor modification of the permit pursuant to 40 C.F.R. § 144.41(d), USEPA modifies the UIC permits to remove the 25-acre parcel from the permits. Afterward, MDEQ remediates the 25-acre portion of the Site. Next, MDEQ (and possibly USEPA) issue(s) a certification of remedy completion or provide(s) written assurance to the City if the 25-acre portion of the Site has been remediated according to statutory and regulatory requirements. See Advantage 2 and Disadvantage 2. Finally, the City transfers the property to the end user.

A. Advantages

- 1) Avoids the risk that the private parties involved could refuse to satisfy their contract commitments to the City after remediation of the 25-acre portion of the property is complete.
- 2) This option potentially provides a USEPA and MDEQ RCRA liability shield for the City and any end user of the 25-acre parcel. However, this advantage is dependent upon USEPA's ability to maintain oversight, review and concurrence authority.
- 3) The City obtains access and control of the 25-acre portion of the Site in a shorter period of time than if Option 1 or Option 2 are chosen.

B. Disadvantages

- 1) After the clean-up, future releases (e.x. migration of contaminated groundwater) could occur from the northern portion of the Site to the 25-acre portion of the Site. Although the owner of the northern portion of the Site would clearly be liable for the future releases under 42 U.S.C. § 3004(v), access issues could be negotiated in anticipation of a future release.
- 2) USEPA cannot approve a certification of remedy completion for a clean-up performed under the authority of MDEQ unless USEPA maintains oversight, review and concurrence authority. A possible solution is to provide for USEPA oversight, review and concurrence in an MOU between USEPA and MDEQ.
- 3) USEPA loses oversight, review and concurrence authority if MDEQ does not request USEPA's approval of a certification of remedy completion for the clean-up.
- 4) Upon purchase of the 25-acre portion of the Site and prior to the completion of the remediation on that property, the City assumes liability for RCRA corrective action requirements as the owner of the property. In short, this option leaves the City liable for corrective action until MDEQ (and possibly USEPA) issue(s) a certification of remedy completion to the City or provide(s) some other written assurance to the City that the 25-acre portion of the property has been remediated according to statutory and regulatory requirements.

Additional USEPA Concerns:

1. USEPA wants to ensure that any remediation performed on the Detroit Coke Site adequately addresses contaminated sediments and discharge of contaminated ground water to the Detroit and Rouge Rivers. If Option 1 or 2 is chosen, this may not be a concern due to USEPA oversight. However, if Option 3 is chosen, USEPA may need to address this concern by entering into an MOU with MDEQ which includes some oversight requirements related to contaminated sediments and discharge of contaminated ground water to the Detroit and Rouge Rivers..
2. USEPA also remains concerned about the remediation of the northern portion of the Detroit Coke Site and the permitting and use of the UIC wells.
3. Finally, USEPA believes that the community needs to be involved in the decision-making process because of potential disproportionate impacts in this Environmental Justice area. In the past, the community expressed decreasing confidence in MDEQ's ability to perform an adequate clean-up, stated that fugitive dust from the cement silos proposed for the Site may contribute to existing air quality problems in the area, and voiced some concern about possible increased truck traffic that may occur if the silos are installed. Under Option 1 and Option 2, these concerns may be addressed by ensuring that USEPA closely adheres to the public participation requirements during the major modifications of UIC permits. Under Option 3, these concerns may be addressed by ensuring that an MOU between MDEQ and USEPA contains increased public participation requirements.

Recommendation: Any Option chosen would require the City of Detroit to enter into potentially extensive negotiations with Detroit Coke, Allied-Signal and MDEQ. Therefore, until the City negotiates an agreement with the current site owners, the staff recommend that USEPA continue to enforce the current corrective action requirements imposed upon the current UIC permit holder, Detroit Coke. Moreover, until MDEQ issues a corrective action permit or order to an owner or operator of the site, USEPA must continue to maintain the lead of the corrective action requirements at the site.

Detroit Coke RCRA Corrective Action Briefing Paper - September 3, 1998

Contacts: UIC - Allen Melcer, (312) 886-1498; RCRA - Greg Rudloff (312) 886-0455;
ORC - Steven Murawski, (312) 886-6741

Purpose:

The purpose of this briefing paper is to provide USEPA management, through the Division Director level, with three legally viable options to remediate the Detroit Coke Site. These options attempt to address all of the major concerns of the USEPA, the City of Detroit and MDEQ. Upon concurrence by USEPA management, a separate summary of the options will be forwarded to MDEQ and the City of Detroit. Part I of the paper offers a brief summary of the issues and the options and the recommendation developed by USEPA staff. Part II of the paper offers a full discussion of the background of the site and the three proposed options including advantages and disadvantages of each specific option.

PART I - BRIEF SUMMARY

Issues:

1. Can USEPA separate a relatively clean portion of a RCRA corrective action site from the more contaminated areas and allow that portion to be cleaned and sold to an end user?
2. After completion of the remediation, what assurances can USEPA provide to end users regarding RCRA corrective action liability?

Option 1: Clean-up and Acquisition

- A. Detroit Coke or MDEQ remediates the 25-acre portion of the property desired by the City of Detroit under USEPA corrective action authority in the existing UIC permits.
- B. USEPA provides a certification of remedy completion for the 25-acre portion of the site after the remediation (if regulatory and statutory requirements are fulfilled).
- C. Detroit Coke transfers the 25-acre portion of the property to the City of Detroit and USEPA redefines the Detroit Coke Site in the existing UIC permits.

Option 2: Clean-up, Acquisition and New Permit Issuance

- A. Detroit Coke or MDEQ remediates the 25-acre portion of the property desired by the City of Detroit under USEPA corrective action authority in the existing UIC permits; simultaneously, Allied-Signal applies for UIC permits currently held by Detroit Coke.
- B. USEPA provides a certification of remedy completion for the 25-acre portion of the site after the remediation (if regulatory and statutory requirements are fulfilled).
- C. Detroit Coke transfers the 25-acre portion of the property to the City of Detroit and USEPA issues to Allied-Signal UIC permits that do not include the 25-acre portion of the site.

Option 3: Acquisition and Clean-up under MDEQ Authority

- A. The City of Detroit acquires the 25-acre portion of the property desired from Detroit Coke and USEPA redefines Detroit Coke Site in the existing UIC permits.
- B. MDEQ issues a corrective action permit or order to the City of Detroit; however, MDEQ remediates the 25-acre portion of the Site.
- C. MDEQ provides a certification of remedy completion for the 25-acre portion of the site.

Recommendation: Any Option chosen would require the City of Detroit to enter into potentially extensive negotiations with Detroit Coke, Allied-Signal and MDEQ. Therefore, until the City negotiates an agreement with the current site owners, the staff recommend that USEPA continue to enforce the current corrective action requirements imposed upon the current UIC permit holder, Detroit Coke. Moreover, until MDEQ issues a corrective action permit or order to an owner or operator of the site, USEPA must continue to maintain the lead of the corrective action requirements at the site.

PART II **DISCUSSION**

Background:

The Detroit Coke facility (Site), located in an Environmental Justice community at the confluence of the Detroit and Rouge rivers, is in southwest Detroit, adjacent to the Zug Island industrial complex. Detroit Coke was a coking facility, formerly owned by Allied-Signal Corp., that produced waste ammonia liquor which was disposed of into three on-site Class I hazardous waste underground injection control (UIC) wells. In September 1990, the Detroit Coke facility closed down. In June 1995, UIC well #1 was plugged. The current Federal UIC permits issued to Detroit Coke have site-wide corrective action requirements in them because Federal UIC permits are RCRA permits by rule and therefore include corrective action requirements. At the time the UIC permits were originally issued to Detroit Coke on September 26, 1991, the State of Michigan was not authorized to administer RCRA corrective action permits. However, on April 8, 1996, USEPA approved Michigan's corrective action program and authorized Michigan to administer RCRA corrective action permits. Pursuant to the existing UIC permits' corrective action provisions, Detroit Coke first submitted a RCRA Facility Investigation (RFI) workplan to USEPA for review and approval on April 1, 1996. USEPA suspended review of Detroit Coke's revised RFI workplan when USEPA learned that MDEQ began a State-funded RFI on February 23, 1998.

MDEQ began the State-funded RFI due, in part, to a recently approved plan to construct casino gambling facilities in Detroit. The chosen location for the casinos is currently occupied by cement storage silos. The City of Detroit (City) proposes relocating the cement silos to the Detroit Coke Site in order to make room for the casinos. The City is prompting the MDEQ to take the lead for corrective action in order to conduct an expedited clean-up.

Detroit Coke recently defaulted on its property taxes, causing the ownership of the Site to become clouded. However, Allied-Signal has recently paid the back taxes, thus redeeming Detroit Coke's ownership of the Site. From February, 1998, through June, 1998, the time when title to the Site was clouded, the MDEQ completed a State-funded facility investigation which shows extensive soil and water contamination. The contaminants are mainly coal tar constituents and metals. Contamination in numerous places exceeds state risk-based clean-up levels. Free product consisting of coal tar/coal oil was found in monitor wells and soil borings and appears to be ubiquitous throughout the Site. The corrective action activities pursuant to the UIC permits (funded by both Detroit Coke and Allied-Signal), have been suspended due to the State's mobilization on-site, but may be resumed in the near future due to the length of time required to transfer the corrective action lead from USEPA to the State.

On August 19, 1998, the City of Detroit expressed its desire to purchase or otherwise obtain title to approximately 25 acres of the Site along the Detroit River. Afterward, the City would like to transfer the 25-acre parcel to three cement silo companies to compensate the companies for their property in the riverfront district where the casinos are to be built. However, the City does not want to assume corrective action liability for the parcel, nor do the cement companies. The City, MDEQ and USEPA have been exploring ways in which the parcel can be transferred to an end user (the cement companies) without incurring RCRA liability for past contamination.

Issues:

1. Can USEPA separate a relatively clean portion of a RCRA corrective action site from the more contaminated areas and allow that portion to be cleaned and sold to an end user?
2. After completion of the remediation, what assurances can USEPA provide to end users regarding RCRA corrective action liability?

Options:

1. **Clean-up and Acquisition:** Initially, USEPA, the City, MDEQ, Detroit Coke and Allied-Signal would have to come to an agreement on the following sequence of steps. Under the existing corrective action authority of the UIC permits, the 25-acre portion of the Site desired by the City is remediated. During the remediation, the 25-acre parcel should also be surveyed and given a tax ID separate from the rest of the Detroit Coke facility. Then, USEPA issues a certification of remedy completion to Detroit Coke that the 25-acre portion of the Site has been remediated according to statutory and regulatory requirements. Upon Detroit Coke's request for minor modification of the permit pursuant to 40 C.F.R. § 144.41(d), USEPA modifies the UIC permits to remove the remediated portion from corrective action requirements. Afterward, the City of Detroit acquires the 25-acre portion of the Site from Detroit Coke. Finally, the City transfers the 25-acre portion of the Site to the end user.

A. Advantages

- 1) MDEQ would not have to issue a corrective action permit or order to the City for the 25-acre parcel as would be required if Option 3 is selected.
- 2) This option provides a USEPA and MDEQ RCRA liability shield for the City and any end user of the 25-acre parcel because the City does not become the owner of the 25-acre portion of the Site until after liability protection is afforded by the certification of remedy completion.
- 3) Site remediation would occur more quickly under this option than under an option that requires transfer of the property prior to remediation (e.x. Option 3).

B. Disadvantages

- 1) A risk exists that the private parties involved could refuse to satisfy their contract commitments to the City after remediation of the 25-acre portion of the property is complete. Possible solutions to this disadvantage include entering into a contract prior to remediation which clearly outlines the property transfer and provides for liquidated damages for breach of contract, placing funds into an escrow account, and obtaining an insurance policy for the site.

- 2) After the clean-up, future releases (e.x. migration of contaminated groundwater) could occur from the northern portion of the Site to the 25-acre portion of the Site. Although the owner of the northern portion of the Site would clearly be liable for the future releases under 42 U.S.C. § 3004(v), access issues could be negotiated in anticipation of a future release.

2. **Clean-up, Acquisition and New Permit Issuance:** Initially, USEPA, the City, MDEQ, Detroit Coke and Allied-Signal would have to come to an agreement on the following sequence of steps. Under the existing corrective action authority of the UIC permits, the 25-acre portion of the Site desired by the City is remediated. During the remediation, the 25-acre parcel should also be surveyed and given a tax ID separate from the rest of the Detroit Coke facility. Additionally, Allied-Signal would submit an application to USEPA to take over the two injection wells from Detroit Coke. After completion of the remediation, USEPA issues a certification of remedy completion to Detroit Coke that the 25-acre portion of the Site has been remediated according to statutory and regulatory requirements. Afterward, the City of Detroit acquires the 25-acre portion of the Site from Detroit Coke. Then, the City transfers the 25-acre portion of the Site to the end user. Finally, USEPA either issues UIC permits to Allied-Signal with corrective action requirements that do not include the 25-acre parcel or USEPA issues UIC permits without corrective action requirements if MDEQ is prepared to enforce the existing corrective action requirements.

A. **Advantages**

- 1) This option eliminates the need for USEPA to modify the existing UIC permits.
- 2) MDEQ would not have to issue a corrective action permit or order to the City for the 25-acre parcel as would be required if Option 3 is selected.
- 3) This option provides a USEPA and MDEQ RCRA liability shield for the City and any end user of the 25-acre parcel because the City does not become the owner of the 25-acre portion of the Site until after liability protection is afforded by the certification of remedy completion.
- 4) This option allows USEPA to directly impose RCRA corrective requirements on Allied-Signal rather than allowing Allied-Signal to continue acting in a voluntary capacity for Detroit Coke.

B. Disadvantages

- 1) Under this Option, timing of USEPA's issuance of the UIC permits to Allied-Signal and the completion of corrective action on the 25-acre parcel would be difficult to coordinate. This difficulty arises because Allied-Signal would be subject to the complete UIC permitting process which includes public comment periods and the right to appeal USEPA's permitting decision.
 - 2) This Option would require a high level of cooperation between Allied-Signal, Detroit Coke and the City of Detroit to ensure that the timing of the issuance of the UIC permits and the completion of the remediation of the 25-acre portion of the property are properly coordinated.
 - 3) This option depends upon Allied-Signal's willingness to submit UIC permit applications to USEPA and to assume responsibility for the two UIC wells.
 - 4) A risk exists that the private parties involved could refuse to satisfy their contract commitments to the City after remediation of the 25-acre portion of the property is complete. Possible solutions to this disadvantage include entering into a contract prior to remediation which clearly outlines the property transfer and provides for liquidated damages for breach of contract, placing funds into an escrow account, and obtaining an insurance policy for the site.
 - 5) The UIC branch may have to issue another UIC permit with RCRA corrective action requirements to Allied-Signal to avoid any lapse of authority to require and enforce corrective action at the Detroit Coke site.
 - 6) After the clean-up, future releases (e.x. migration of contaminated groundwater) could occur from the northern portion of the Site to the 25-acre portion of the Site. Although the owner of the northern portion of the Site would clearly be liable for the future releases under 42 U.S.C. § 3004(v), access issues could be negotiated in anticipation of a future release.
3. **Acquisition and Clean-up under MDEQ Authority:** The 25-acre parcel desired by the City is surveyed and given a tax ID separate from the rest of the Detroit Coke facility. Then, the City acquires the 25-acre portion of the Site from Detroit Coke. Upon Detroit Coke's request for minor modification of the permit pursuant to 40 C.F.R. § 144.41(d), USEPA modifies the UIC permits to remove the remediated portion from corrective action requirements. Afterward, MDEQ issues a corrective action permit or order to the City for the 25-acre portion of the Site. Then, MDEQ remediates the 25-acre portion of the Site. Next, MDEQ (and possibly USEPA) issue(s) a certification of remedy completion or provide(s) written assurance to the City that the 25-acre portion of the Site has been remediated according to statutory and regulatory requirements. See Advantage 2 and Disadvantage 2. Finally, the City transfers the property to the end user.

A. Advantages

- 1) Avoids the risk that the private parties involved could refuse to satisfy their contract commitments to the City after remediation of the 25-acre portion of the property is complete.
- 2) This option potentially provides a USEPA and MDEQ RCRA liability shield for the City and any end user of the 25-acre parcel. However, this advantage is dependent upon USEPA's ability to maintain oversight, review and concurrence authority.
- 3) The City obtains access and control of the 25-acre portion of the Site in a shorter period of time than if Option 1 or Option 2 are chosen.

B. Disadvantages

- 1) After the clean-up, future releases (e.x. migration of contaminated groundwater) could occur from the northern portion of the Site to the 25-acre portion of the Site. Although the owner of the northern portion of the Site would clearly be liable for the future releases under 42 U.S.C. § 3004(v), access issues could be negotiated in anticipation of a future release.
- 2) USEPA cannot approve a certification of remedy completion for a clean-up performed under the authority of MDEQ unless USEPA maintains oversight, review and concurrence authority. A possible solution is to provide for USEPA oversight, review and concurrence in an MOU between USEPA and MDEQ.
- 3) USEPA loses oversight, review and concurrence authority if MDEQ does not request USEPA's approval of a certification of remedy completion for the clean-up.
- 4) Upon purchase of the 25-acre portion of the Site and prior to the completion of the remediation on that property, the City assumes liability for RCRA corrective action requirements as the owner of the property. In short, this option leaves the City liable for corrective action until MDEQ (and possibly USEPA) issue(s) a certification of remedy completion to the City or provide(s) some other written assurance to the City that the 25-acre portion of the property has been remediated according to statutory and regulatory requirements.

Additional USEPA Concerns:

1. USEPA wants to ensure that any remediation performed on the Detroit Coke Site adequately addresses contaminated sediments and discharge of contaminated ground water to the Detroit and Rouge Rivers. If Option 1 or 2 is chosen, this may not be a concern due to USEPA oversight. However, if Option 3 is chosen, USEPA may need to address this concern by entering into an MOU with MDEQ which includes some oversight requirements related to contaminated sediments and discharge of contaminated ground water to the Detroit and Rouge Rivers..
2. USEPA also remains concerned about the remediation of the northern portion of the Detroit Coke Site and the permitting and use of the UIC wells.
3. Finally, USEPA believes that the community needs to be involved in the decision-making process because of potential disproportionate impacts in this Environmental Justice area. In the past, the community expressed decreasing confidence in MDEQ's ability to perform an adequate clean-up, stated that fugitive dust from the cement silos proposed for the Site may contribute to existing air quality problems in the area, and voiced some concern about possible increased truck traffic that may occur if the silos are installed. These concerns may be addressed by ensuring that an MOU between MDEQ and USEPA contains increased public participation requirements.

Recommendation: Any Option chosen would require the City of Detroit to enter into potentially extensive negotiations with Detroit Coke, Allied-Signal and MDEQ. Therefore, until the City negotiates an agreement with the current site owners, the staff recommend that USEPA continue to enforce the current corrective action requirements imposed upon the current UIC permit holder, Detroit Coke. Moreover, until MDEQ issues a corrective action permit or order to an owner or operator of the site, USEPA must continue to maintain the lead of the corrective action requirements at the site.

Deliberative Process - Enforcement Confidential

~~DISSEMINATION FOR PROSECUTION~~

Ex. 5

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIRONMENTAL RESPONSE DIVISION

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